

Disciplinary Actions

Disciplinary Actions Reported For December

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, December 21, 1998. The information relating to matters contained in this *Notice* is current as of the end of November 23.

Firms Fined, Individuals Sanctioned

Hunter International Securities, Inc. (Ft. Lauderdale, Florida) and **Louis Nick Nizza, Jr. (Registered Principal, Deerfield Beach, Florida)**. The firm was censured and fined \$40,000 and Nizza was censured, fined \$20,000, barred from acting in the capacity of financial and operations principal (FINOP), suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam before acting in any capacity requiring registration. The National Adjudicatory Council (NAC) imposed the sanctions after review of an Atlanta District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, acting through Nizza, conducted a securities business while it maintained insufficient net capital and failed to maintain accurate books and records. In addition, the firm, acting through Nizza, filed materially inaccurate FOCUS Part I and IIA reports. Hunter International reported Nasdaq[®] transactions erroneously, failed to disclose its Market Maker status on confirmations, and failed to disclose the markup or markdown it charged on confirmations.

Premier Capital Management, Inc. (Dallas, Texas) and **Bryan James O'Leary (Registered Principal, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, O'Leary was suspended as an introducing broker/dealer FINOP for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through O'Leary, failed to post accurately on its general ledger and trial balance liabilities incurred for advertising expense. The findings also stated that the firm, acting through O'Leary, effected securities transactions while failing to maintain required minimum net capital.

Firms And Individuals Fined

E-W Investments, Inc. (San Gabriel, California) and **John Arthur Pong (Registered Principal, San Gabriel, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured, fined \$10,000, jointly and severally, and ordered to reimburse public customers the total amount of commissions in excess of five percent (\$2,411.78). In addition, the firm was ordered to hire a new FINOP, other than Pong, and retain the new principal for one year or until Pong successfully requalified as a FINOP should he elect to do so. Without admitting or denying the allegations, the respondents consented to the described sanctions, and to the entry of findings that the firm, acting under the direction and control of Pong, acted as an agent for public customers in securities transactions and charged the customers more than a fair commission, taking into consideration all relevant circumstances including market conditions with respect to such securities at the time of the transactions, the expense of executing the orders, and the value

of any services they may have rendered by reason of experience in and knowledge of such securities and the markets. The findings also stated that the firm, acting under the direction and control of Pong, failed to have and maintain sufficient net capital.

Securities & Investment Planning Company (Chatham, New Jersey) and **Daryl Scott Hersch (Registered Principal, Chatham, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured, fined \$10,000, jointly and severally, and the firm was fined an additional \$17,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Hersch, failed to file reports in a timely manner pursuant to the NASD reporting rule. The findings also stated that the firm, acting through Hersch, reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) in violation of applicable securities laws and regulations regarding trade reporting and failed to develop written supervisory procedures to address the NASD reporting requirements and trade reporting/ACT submissions. The NASD also determined that the firm, acting through Hersch, failed to enforce the written procedures it had established to better ensure compliance with applicable rules and regulations.

Firms Fined

Bear, Stearns & Co., Inc. (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry

of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by various public customers who included demands for punitive damages, attorneys' fees, as well as other relief. According to the findings, each of the customers signed an agreement with the firm stating that the terms of the agreement would be governed by the laws of the state of New York. The NASD determined that in some of these proceedings, Bear Stearns asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and therefore precluded an award of punitive damages or attorneys' fees, in violation of IM-3110(f)(4).

Biltmore Securities, Inc. (Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$20,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by public customers who sought punitive damages or attorneys' fees. According to the findings, each of the customers signed an agreement with the firm stating that the proceeding would be governed by the laws of the state of New York. The NASD determined that in a number of these arbitration proceedings, Biltmore Securities asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and therefore precluded an award of punitive damages or attorneys' fees, in violation of IM-3110(f)(4).

Equitrade Securities Corporation (Lake Forest, California) submitted a Letter of Acceptance, Waiver, and

Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to reflect accurately the time of execution on order tickets for transactions in OTC equity securities, in Nasdaq National Market[®] securities, and a transaction in a Nasdaq Small-CapSM Market security. In addition, the NASD determined that the firm failed to provide to a public customer the requisite written disclosures or confirmations concerning securities transactions variously executed in two brokerage accounts, and that the firm conducted a general securities business while failing to have and maintain sufficient net capital. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws pertaining to trade reporting.

Gaines, Berland Inc. (Bethpage, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$31,000, and required to pay \$9,617.62 in restitution and interest to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm reported transactions to ACT in violation of applicable securities laws and regulations regarding trade reporting, and failed to establish and maintain writ-

ten supervisory procedures reasonably designed to achieve compliance with ACT rules, the Securities and Exchange Commission (SEC) Order Execution Rules, the Small Order Execution SystemSM (SOESSM) rules, and the trade reporting rules.

H. J. Meyers & Co., Inc.

(Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to display immediately customer limit orders to ACT when orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimis* charge in relation to the size associated with the firm's bid or offer in each security. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable rules regarding trade reporting, anti-competitive practices, and order handling.

Merrill Lynch, Pierce, Fenner & Smith Incorporated (New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$25,000, and required to undertake additional corrective actions to prevent future violations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was named as a respondent in certain arbitration proceedings filed with the NASD by various public customers who included demands for punitive damages and/or attorneys' fees in the proceed-

ings. According to the findings, each of the customers signed an agreement with the firm stating that the terms of the agreement would be governed by the laws of the state of New York. The NASD determined that in some of these proceedings, Merrill Lynch asserted that New York law applied to the proceeding by virtue of the governing law clause in the customer agreement and therefore precluded an award of punitive damages or attorneys' fees, in violation of IM-3110(f)(4).

Individuals Barred Or Suspended

Derick Raymond Adamson (Registered Representative, Glassboro, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to make restitution in the amount of \$14,576.46 to a public customer. Without admitting or denying the allegations, Adamson consented to the described sanctions and to the entry of findings that, without the prior knowledge, authorization, or consent of a public customer, he signed the customer's name on insurance application forms which permitted the issuance of \$93,451 in the name of the customer's son and electronic fund transfers from the customer's personal bank account. Adamson also caused the customer's address to be changed to his address. Moreover, the findings stated that Adamson signed the customer's signature on a Policy Record Audit Letter, without the customer's knowledge or consent, caused a \$1,600 loan to be taken against the policy and mailed to his home address, and converted the check to his personal use and benefit. In addition, Adamson caused another customer's address to be changed, wrote checks totaling \$25,700 against the customer's account and converted the checks to his own use by depositing the checks into his personal bank

account. Adamson also signed the customer's name to a Flexible Premium Annuity application without the customer's knowledge, authorization, or consent. Adamson also failed to respond to NASD requests for information.

Dale Richard Altman (Registered Representative, Pittsburgh, Pennsylvania)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Altman signed the name of a public customer to an Authorization to Liquidate, Exchange and/or Change Broker/Dealer Form, without her knowledge or consent, causing the transfer of her IRA account to his member firm.

Michael Edward Anniuk (Registered Representative, Racine, Wisconsin)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$335,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Anniuk consented to the described sanctions and to the entry of findings that he accepted personal checks for the purchase of annuity contracts from public customers that he deposited in his personal account and converted to his own use. Anniuk also failed to respond to NASD requests for information.

Percy Barr (Registered Representative, Greenwood, Mississippi)

submitted an Offer of Settlement pursuant to which he was censured, fined \$373,500, barred from association with any NASD member in any capacity, and required to pay \$49,700 in restitution to the appropriate parties. Without admitting or denying the allegations, Barr consented to the described sanctions and to the entry

of findings that he received payments totaling \$49,700 from public customers for the purchase of, and as payment on, annuities and mutual funds. The NASD found that Barr failed and neglected to submit these funds to his member firm on the customers' behalf, and instead converted the funds to his own use and benefit, without the customers' knowledge or consent. The findings also stated that Barr failed to timely respond to NASD requests for information.

Jere Mease Bender (Registered Representative, Elizabethtown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bender consented to the described sanctions and to the entry of findings that he collected funds from a public customer to be remitted in the payment of premiums on the customer's life insurance policy, but failed to remit the full amount received from the customer. The findings also stated that Bender made material misstatements and omitted material facts concerning his dealings with the customer during an internal inquiry conducted by his member firms.

Alan Barrie Best (Registered Representative, Vancouver, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Best consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notification to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received or might receive selling

compensation in connection with the transactions.

Jack Charles Biondolillo (Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$142,686.94, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Biondolillo consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf.

Charles Douglas Brown (Registered Representative, Apache Junction, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 90 days, and required to pay \$50,000 in restitution to public customers. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in outside business activities and private securities transactions, without giving prior written notice to his member firms.

William George Brunner (Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 30 days, required to requalify as a general securities representative, and ordered to demonstrate that restitution in the amount of \$24,781.25 has been made to a public customer or that he has paid the customer such amount as has been determined by an arbitration or other proceeding or settlement to be owed to the customer by Brunner. The fine of \$20,000 shall be reduced, dollar for dollar, by the amount of any restitution

payments made to the customer. However, the fine shall not be reduced less than \$10,000. Without admitting or denying the allegations, Brunner consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that Brunner made fraudulent price predictions in connection with his recommendation of securities and failed to execute the sell order of a public customer.

Robert Francis Carlton (Registered Representative, Aberdeen, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$39,575, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carlton consented to the described sanctions and to the entry of findings that he converted dividend withdrawal and refund checks totaling \$7,915 received from insurance customers for his own use by endorsing checks given to him for reinvestment or by forging customers' signatures on checks never delivered to the customers and depositing them into his personal bank account.

James Maurice Cassidy (Registered Representative, East Hampton, New York) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cassidy failed to respond to NASD requests for information.

Jerry Enrique Chaverri (Registered Principal, DeSoto, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam in

all capacities. Without admitting or denying the allegations, Chaverri consented to the described sanctions and to the entry of findings that he made improper use of customer funds by taking possession of a customer's check in the amount of \$900, depositing the funds into his personal bank account, and failing to forward the customer's funds to his member firm until a later date.

John Michael Columbia (Registered Principal, Staten Island, New York) was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam in any capacity in which he seeks to participate in the securities industry. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Columbia executed an unauthorized transaction in the account of a public customer.

John Corona (Registered Representative, Howard Beach, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in the securities industry after March 3, 1995, in the amount of at least \$5,000. Without admitting or denying the allegations, Corona consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf. Corona also failed to respond to NASD requests for information and to appear for an on-the-record interview.

Denis C. J. Dancoes (Registered Principal, South Portland, Maine) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association

with any NASD member in any capacity. Without admitting or denying the allegations, Dancoes consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents.

Michael Walesby Davis (Registered Principal, Plano, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$125,000, barred from association with any NASD member in any capacity, and required to pay restitution in the amount of \$1,049,792. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm, and participated in the operation of an unregistered broker/dealer. The findings also stated that Davis received funds from investors when no disclosure had been made to the investors that their funds would be used to pay broker/dealer expenses including payments to Davis.

Richard Kentner DeFreez (Registered Representative, Anchorage, Alaska) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,000, suspended from association with any NASD member in any capacity for seven business days, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, DeFreez consented to the described sanctions and to the entry of findings that he recommended purchases and sales of securities to public customers without having reasonable grounds for believing such transactions were suitable for them in view of the nature, size, and concentration of the recommended transactions and upon the basis of the facts disclosed by the customers as to their

other securities holdings and as to their financial situation, objectives, and needs.

Christopher B. Dolan (Registered Representative, Palm Beach Gardens, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 90 days. The \$10,000 fine and the 90-day suspension shall be deemed paid and served by virtue of the \$10,000 fine and 90-day suspension imposed against Dolan by his member firm. Without admitting or denying the allegations, Dolan consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in the account of public customers.

Dolan's suspension began October 23, 1997, and concluded January 21, 1998.

Barry Alan Druschel (Registered Representative, Ellicott City, Maryland) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Druschel consented to the described sanctions and to the entry of findings that he sold an annuity issued by his member firm to insurance customers which was to replace and be funded with the proceeds from two annuities the customers owned that were issued by another company. The NASD found that thereafter, acting under a mistaken belief of implied authority, but without express authorization from the customers and without their knowledge, Druschel signed their names to a document and submitted it to the other insurance com-

pany, directing it to transfer the funds from the existing annuities to his member firm.

Paul Alderic Dufresne (Registered Representative, West Buxton, Maine) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dufresne consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information.

Robert Eric Dunlap (Registered Representative, Columbus, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$1,000,000, barred from association with any NASD member in any capacity, and required to provide proof of restitution to customers with any future application for association with a member firm. Without admitting or denying the allegations, Dunlap consented to the described sanctions and to the entry of findings that he received funds totaling \$79,788.93 from insurance customers with instructions to use the funds as payment on an insurance policy or to purchase insurance policies or certificates of deposit. The findings stated that Dunlap failed to follow the customers' instructions, used only \$400 to pay a customer's insurance policy, and used the remainder of the funds for some purpose other than the benefit of the customers. Dunlap also obtained a total of \$354,000 in loans or withdrawals from insurance policies of a public customer, without the approval of the customer, and used the funds for some purpose other than the benefit of the customer. In addition, Dunlap participated in private securities transactions and failed and neglected to give written notice of his intention to engage in such activities to his member firms and to receive

their written approval. Dunlap also failed to respond to NASD requests for information.

Mark Thomas Ennis (Registered Representative, Littleton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ennis consented to the described sanctions and to the entry of findings that he signed a public customer's name to a Request for Partial Withdrawal of \$16,000 from the customer's fixed annuity contract, arranged for the negotiation of the withdrawal check, and converted the proceeds to his own use and benefit, without the knowledge or consent of the customer.

John Roger Faherty (Registered Principal, Spring Lake, New Jersey) was censured, fined \$150,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a Market Regulation Committee decision. The sanctions were based on findings that Faherty aided and abetted his member firm's manipulation of securities.

Faherty has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

Gary Michael Ferone (Registered Representative, Tuckahoe, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$250,000, barred from association with any NASD member in any capacity, ordered to disgorge \$14,070 in commissions, and make restitution in the amount of \$469,000. Without admitting or denying the allegations, Ferone consented to the described sanctions and to the entry of findings that he engaged in private

securities transactions and failed to give prior notice to and receive consent from his member firm to engage in such activities. The findings also stated that Ferone engaged in the sale of unregistered securities. Furthermore, the NASD determined that Ferone recommended the purchase of securities to public customers without having reasonable grounds for believing that such recommendations were suitable for the customers based upon the customers' financial situations, needs, and stated investment objectives, and induced public customers to purchase securities by means of misrepresentations and omissions of material facts. Also, the NASD found that Ferone failed to register as a broker or dealer with the SEC and functioned in the capacity of a general securities representative without the benefit of proper registration with the NASD.

John Loras Finn (Registered Principal, Dubuque, Iowa) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Finn consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Steven Ladd Fritz (Registered Principal, Tulsa, Oklahoma) submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he effected unauthorized withdrawals and/or transfers involving an estimated \$1,785,749 from the accounts of public customers. The NASD determined that Fritz converted approximately \$598,428 of these funds to his own use and benefit, without the customers' knowledge or consent, by

forging customers' signatures to Letters of Authorization, preparing and sending false account statements to the customers, and making false and misleading statements in an effort to conceal these activities. The findings also stated that Fritz failed to respond to NASD requests for information.

Daniel James Gallagher (Registered Representative, Roslyn, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by Series 7 exam prior to acting in that capacity. Without admitting or denying the allegations, Gallagher consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions as to a speculative security to a public customer and made unauthorized trades in the accounts of public customers. The findings also stated that Gallagher made a false statement to a customer about an issuer's securities and improperly discouraged or failed to execute sell orders.

Ashton Noshir Gowadia (Registered Representative, Newport Beach, California) was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to requalify as a general securities representative. The SEC affirmed the sanctions following appeal of a November 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Gowadia failed to respond to NASD requests for information.

Stuart S. Greenberg (Registered Principal, Agoura Hills, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association as a general securities principal

for 10 business days. Without admitting or denying the allegations, Greenberg consented to the described sanctions and to the entry of findings that he permitted an individual subject to a statutory disqualification to function as an associated person of a member firm without having sought and obtained approval for such association from the NASD through its eligibility proceedings. The findings also stated that a member firm, acting under the direction and control of Greenberg, failed to have and maintain sufficient net capital as a result of Greenberg knowingly writing a bad check in the amount of \$100,000.

Debra Lynn Hart (Registered Representative, Tallahassee, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$117,070, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that she received funds totaling \$23,414 from public customers for investment purposes and converted the funds to her own use and benefit.

Bryan Jay Herman (Registered Principal, Kings Point, New York) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Herman failed to respond to NASD requests for information and to appear for an on-the-record interview.

Ronald Lee Holifield (Registered Representative, Laurel, Mississippi) and **Reginald Glen Holifield (Registered Representative, Laurel, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which Ronald Holifield was censured, fined \$50,000, and barred from association with any NASD member in any capacity, and

Reginald Holifield was censured, fined \$10,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ronald Holifield engaged in private securities transactions without prior written notice to and approval from his member firm. The findings also stated that Reginald Holifield failed and neglected to exercise reasonable and proper supervision over Ronald Holifield in that he failed to monitor or report on private securities transactions being conducted by Ronald Holifield.

Michael Hyat (Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$24,308.58, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hyat consented to the described sanctions and to the entry of findings that he entered into an arrangement with a registered individual employed at another broker/dealer to participate in private securities transactions and to execute orders away from the outside sales representative's firm, without notifying his member firm, either orally or in writing of this arrangement.

Morton Kirschenbaum (Registered Principal, San Mateo, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Kirschenbaum consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce a system to supervise the activities of his member

firm's Office of Supervisory Jurisdiction that was reasonably designed to achieve compliance with applicable securities laws and regulations and with the rules of the NASD.

Lori Sue Koppel-Heath (Registered Principal, Trabuco Canyon, California) was censured, fined \$59,021.31, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative before again acting in that capacity. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Koppel-Heath recommended purchases, sales, and redemptions of mutual funds, unit investment trust shares, and other investments in public customer accounts without having reasonable grounds for believing that they were suitable for the customers in view of the size, frequency, and nature of the recommended transactions, and the facts disclosed by the customers as to their other securities holdings, financial situation, circumstances, and needs.

Richard Raymond Langevin (Registered Principal, Worcester, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Langevin consented to the described sanctions and to the entry of findings that he signed a public customer's name to an insurance policy rider without the knowledge or consent of the customer.

Jaime Enrique Lemus (Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying

the allegations, Lemus consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on documents to facilitate the liquidation of a fixed annuity owned by the customer. The findings also stated that Lemus forged the customer's signature on the \$24,462 annuity liquidation check and converted the proceeds by depositing the check into his personal business account. Lemus also failed to respond to an NASD request for information.

Gregg Robert Leslie (Registered Representative, La Costa, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$45,241.42, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Leslie consented to the described sanctions and to the entry of findings that he entered into an arrangement with a registered individual at another broker/dealer to execute orders away from Leslie's member firm and participated in private securities transactions through the other broker/dealer, without notifying his member firm, either orally or in writing, of this arrangement.

Alan Scott Lipsky (Registered Principal, Kings Point, New York) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lipsky failed to respond to NASD requests for information and to appear for an on-the-record interview.

Dean Joseph LoBrutto (Registered Representative, East Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the alle-

gations, LoBrutto consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm describing the transactions and his role therein.

Steven Terrell Mayes (Registered Representative, Oak Ridge, Tennessee) was censured, fined \$53,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mayes converted \$1,700 in customer funds, intended for the purchase of shares in a mutual fund. Mayes also failed to respond to NASD requests for information and documents.

Robert Gerard McAllister (Registered Principal, Sea Girt, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, McAllister consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Timothy Eric McKeon (Registered Principal, Holbrook, New York) submitted an Offer of Settlement pursuant to which he was censured, fined \$86,312, barred from association with any NASD member in any capacity, and ordered to pay restitution to customers in the amount of \$35,447. Without admitting or denying the allegations, McKeon consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that McKeon executed unauthorized transactions and failed to follow customer instructions.

Russell Wayne Millard (Registered Representative, Hemet, California)

submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, and ordered to offer rescission to investors, and to the extent the offer of rescission was accepted by any investors, Millard was ordered to exchange such investor's interests in the investment for full and complete restitution. Without admitting or denying the allegations, Millard consented to the described sanctions and to the entry of findings that he participated in contingent offerings and failed to deposit and retain customer funds in separate escrow accounts until the minimum number of units had been sold.

Instead the funds were intentionally commingled with funds from other sources and used to cover, among other things, operating costs of affiliates and interest payments to investors of other private placements.

Joseph J. Miniaci (Registered Representative, Brooklyn, New York)

was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miniaci failed to respond to NASD requests for information.

Richard Gabriel Murphy (Registered Representative, Indianapolis, Indiana)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$18,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Murphy consented to the described sanctions and to the entry of findings that he obtained a total of \$1,500 in cash withdrawn from the bank account of a public customer without the knowledge or consent of the customer and used the funds for some purpose other than for the benefit of the customer.

Randy Harris Narod (Registered Representative, Oceanside, New York)

submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in the securities industry after September 11, 1995, in the amount of at least \$1,000. Without admitting or denying the allegations, Narod consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 and 63 exams on his behalf. Narod also failed to respond to NASD requests to appear for an on-the-record interview.

Robert Edward Nicolosi (Registered Representative, Baldwin, New York)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$70,000, barred from association with any NASD member in any capacity, and required to pay \$41,970 in restitution to a public customer. Without admitting or denying the allegations, Nicolosi consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his recommendations of securities to public customers. The findings also stated that Nicolosi made fraudulent price predictions in connection with his recommendations of securities to public customers, entered orders to purchase securities in the accounts of a public customer without first obtaining the authorization of the customer, and failed to testify truthfully at an NASD on-the-record interview.

David William Noble (Registered Principal, Flemington, New Jersey)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from associ-

ation with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Noble consented to the described sanctions and to the entry of findings that he aided and abetted his member firm and its president in an unlawful, unregistered distribution of common stock by executing "wash" and "matched" trades with two other broker/dealers. These transactions artificially inflated the reported trading volume in the stock and aided and abetted his member firm and its president in violating a provision in the firm's restriction agreement that prohibited principal retail trading. The NASD also found that Noble failed to reflect the circular nature of the trades in his firm's books and records, thereby causing them to be inaccurate and incomplete.

Peter David Ottaviano (Registered Representative, Colchester, Connecticut)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$402,000, barred from association with any NASD member in any capacity, and required to make restitution in the amount of \$46,355 to his member firm. Without admitting or denying the allegations, Ottaviano consented to the described sanctions and to the entry of findings that he received funds totaling \$78,355 from public customers intended for the purchase of non-securities products. The NASD found that Ottaviano failed to use the funds as intended or in any other manner for the benefit of the customers, and instead used them for his own benefit.

Michael Anthony Pellegrino (Registered Representative, Brooklyn, New York)

submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and required to disgorge all monies earned by him while associated or otherwise employed in

the securities industry after October 26, 1995. Without admitting or denying the allegations, Pellegrino consented to the described sanctions and to the entry of findings that he had an impostor take the Series 7 exam on his behalf. Pellegrino also failed to respond to NASD requests to appear for an on-the-record interview.

George Perez, Jr. (Associated Person, Bronx, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he submitted a Form U-4 that failed to disclose a felony conviction.

Jon David Raymond (Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$67,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Raymond consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of a public customer without obtaining prior written authorization from the customer and written acceptance by his member firm of the account as discretionary. The findings also stated that Raymond recommended, and executed, transactions on margin in the customer's securities accounts, without having reasonable grounds for believing that such recommendations were suitable for the customer.

George Alfred Rendon (Registered Principal, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from associ-

ation with any NASD member in any capacity for one year. Without admitting or denying the allegations, Rendon consented to the described sanctions and to the entry of findings that he participated in private securities transactions but failed to provide prior written notification to his member firm.

Jean Richard (Registered Representative, Lake Worth, Florida) submitted an Offer of Settlement pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Richard consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

Roderick James Rieman (Registered Representative, Naperville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$8,900, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Rieman consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm, and to receive written approval from the firm prior to engaging in such activities.

Vincent Natale Scalese (Registered Representative, Groton, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$360,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scalese consented to the described sanctions and to the entry of findings that, without the knowledge or consent of the ben-

eficiaries of the estate of a public customer, he misused funds totaling \$69,404.25 by signing the decedent's name to a check, removing cash from the decedent's safe deposit box, and changing the address of record for the estate of the decedent's trust fund to an address under his control.

Marc Walter Schulz (Registered Principal, Rockford, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Schulz consented to the described sanctions and to the entry of findings that he engaged in the purchases and sales of securities for the account of a public customer without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customer based upon the facts known to him concerning the nature of the securities, the concentration of similar securities purchased by the customer, the customer's age, investment history, education, need for liquidity, investment objectives, and financial situation and needs.

Russell Thomas Tansey (Registered Representative, Amherst, Ohio) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegation, Tansey consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

Waldith George Thompson (Registered Representative, Coral Springs, Florida) was censured, fined \$85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thompson received

funds totaling \$10,285 from an insurance customer intended for investment in an insurance plan. Contrary to the misrepresentations Thompson made to the customer, he never invested any of the customer's funds in the plan or any other investment or products offered by his member firm, used the customer's funds for another purpose, and failed to reimburse the customer. Thompson failed to respond to NASD requests for information.

Peter Robert Trapani (Registered Representative, Oakbrook Terrace, Illinois) submitted an Offer of Settlement pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for five business days, and required to take and pass all examinations for the capacities in which he wishes to function with an NASD member. Without admitting or denying the allegations, Trapani consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm and receive written acknowledgment or approval from his firm prior to engaging in such activities. The findings also stated that Trapani opened several brokerage accounts in which he had a financial interest and/or discretionary trading authority at other firms, and failed to give written notice to his member firm of the accounts, and failed to give written notice to the other member firms of his association with a member firm. Furthermore, the NASD determined that Trapani purchased shares of common stock the first day of trading in the secondary market that traded at a premium in the immediate aftermarket in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

Horacio Garcia Valle (Registered Representative, Dallas, Texas) sub-

mitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for five business days, and required to honor an arbitration award by paying his member firm \$15,000 and \$3,000 each month thereafter until the award is satisfied. Without admitting or denying the allegations, Valle consented to the described sanctions and to the entry of findings that he failed to honor a New York Stock Exchange arbitration award in the amount of \$53,252.21.

Richard Herbert Walls (Registered Representative, Lubbock, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Walls consented to the described sanctions and to the entry of findings that he recommended to and effected the purchase of securities for public customers outside of the regular course or scope of his association with his member firm and failed to provide the firm with written notice detailing the transactions, his proposed role therein and whether he had or would receive selling compensation in connection with these securities transactions.

Leo Douglas Walter (Registered Representative, Clearwater, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Walter consented to the described sanctions and to the entry of findings that he misappropriated at least \$14,431.29 in premium payments made by customers for insurance policies.

Charles Edward Waterfall (Registered Principal, Royal Oak, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 40 business days (28 business days of which shall be deemed served by virtue of the 28-business day suspension imposed against him by his member firm). Without admitting or denying the allegations, Waterfall consented to the described sanctions and to the entry of findings that he entered into a settlement agreement with a public customer without informing his member firms of his actions or the customer's complaint and its resolution. The findings also stated that Waterfall failed to amend his Form U-4 to disclose the settlement agreement.

Waterfall's suspension began January 31, 1997 and concluded March 12, 1997.

Larry Anthony White (Registered Representative, Sarasota, Florida) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he signed the names of public customers on new account applications and mutual fund disclosure forms without their prior knowledge or authorization.

Thomas Charles Winn (Registered Principal, Haverstraw, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Winn consented to the described sanctions and to the entry

of findings that he participated in private securities transactions and failed to provide written notice to his member firm describing the proposed transactions. The findings also stated that Winn failed to respond to NASD requests for an on-the-record interview.

John Nicholas Withum (Registered Representative, Milltown, New Jersey) submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Withum consented to the described sanctions and to the entry of findings that, without the customer's knowledge or authorization, he forged a public customer's signature on Disbursement Request forms pursuant to which money was borrowed from one of the customer's insurance policy to pay premiums on a subsequent insurance policy.

Todd Alan Zonca (Registered Principal, Howell, Michigan) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$66,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zonca consented to the described sanctions and to the entry of findings that he withdrew a total of \$11,200 from the money market mutual fund of a public customer and used the funds for some purpose other than the benefit of the customer, without the knowledge or consent of the customer.

Vladislav Steven Zubkis (Registered Representative, Bonita, California) was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an August 1997 NBCC decision. The sanctions were based on findings that Zubkis failed to

respond to NASD requests for information and to provide testimony.

Individuals Fined

Michael William Adams (Registered Representative, Rowland Heights, California) submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he recommended numerous purchase and sale transactions in various securities accounts of public customers without having reasonable grounds for believing that they were suitable for the customers and accounts in view of the size, frequency, and nature of the recommended transactions and the facts disclosed by the customers as to their financial situation, objectives, circumstances, and needs. The findings also stated that Adams induced these purchase and sale transactions by means of manipulative, deceptive, or other fraudulent devices or contrivances.

Kenneth Eugene Banwart, Sr. (Registered Principal, Newport, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$14,639. Without admitting or denying the allegations, Banwart consented to the described sanctions and to the entry of findings that he failed to provide written notice to his member firms that he had opened a securities account with another firm and failed to provide written notice to the executing firm, that he was registered with other member firms. The findings also stated that Banwart purchased shares of units of public offerings that traded at a premium when the secondary market commenced for each security.

Christopher John Benz (Registered Principal, Santa Monica, California)

was censured, fined \$7,500, and required to requalify by exam as a general securities principal before acting in a principal capacity. The U.S. Court of Appeals affirmed the sanctions following appeal of a March 1997 SEC decision. The sanctions were based on findings that Benz failed to supervise a registered representative adequately and failed to enforce his member firm's supervisory procedures.

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of November 23, 1998. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Robert Fitzpatrick (Registered Principal, Clifton Park, New York)

was fined \$2,500, and suspended from association with any NASD member in any capacity for 15 business days. The sanctions were based on findings that Fitzpatrick failed to respond to NASD requests for information in a timely manner.

Fitzpatrick has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

Hattier, Sanford & Reynoir, L.L.P (New Orleans, Louisiana) and **Gus A. Reynoir (Registered Principal, New Orleans, Louisiana)**. The firm and Reynoir withdrew their appeal and the NAC subsequently called the case for review. The sanctions are not in effect pending consideration of the review.

Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are adjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Paul Michael Acosta (Registered Representative, Naples, Florida)

was named as a respondent in an NASD complaint alleging that he received over \$1,054,000 from public customers for investment purposes, actually invested only \$150,000 of the total funds, and converted the remaining funds for his own use and benefit and the benefit of a business with which he was associated. The complaint also alleges that Acosta knowingly prepared and provided a public customer with account statements which misrepresented that the customer held investments which did not exist, and failed to disclose that a portion of the customer's funds had been converted and misappropriated. The complaint alleges that Acosta failed to provide prompt written notification of his employment with an outside corporation to either of his member firms. The complaint also alleges that Acosta failed to respond to NASD requests for information.

Thomas Owen Combs (Registered Representative, Memphis, Tennessee)

was named as a respondent in an NASD complaint alleging that he received \$4,000 in the form of checks from a public customer for the purpose of investing in variable annuities for her children, failed and neglected to establish the variable annuity accounts on the children's behalf, and instead converted the

\$4,000 to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Combs effected an unauthorized loan transaction in the amount of \$3,089 against the whole life insurance policy account of another public customer, then used these funds to establish a new variable life insurance policy on behalf of the customer, without the customer's knowledge or consent. The complaint also alleges that Combs failed to respond to NASD requests for information.

Wayne Adam Garfinkel (Registered Representative, Boca Raton, Florida)

was named as a respondent in an NASD complaint alleging that he recommended and implemented a course of unsuitable and excessive trading in the account of a public customer.

George W. Guttman (Registered Principal, Brooklyn, New York)

was named as a respondent in an NASD complaint alleging that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by Guttman's member firm. The complaint alleges that Guttman settled a public customer complaint without the prior knowledge or consent of his member firm. The complaint also alleges that Guttman falsely represented to the customer that his firm had agreed to reimburse the customer for the unauthorized trade, without the prior knowledge and consent of the member firm. The complaint also alleges that Guttman effected unauthorized transactions in the accounts of public customers without the customers' knowledge or consent. The complaint also alleges that Guttman guaranteed a public customer against loss by promising he would reimburse the customer for any loss.

Lawrence Ralph Kassl (Registered Representative, Danville, Illinois)

was named as a respondent in an NASD complaint alleging that he received checks in the amount of \$10,500 from a public customer with instructions to deposit the funds in an existing variable annuity. The complaint alleges that, contrary to the customer's instructions and without her knowledge or consent, Kassl deposited the checks in a bank account in which he had an interest or controlled, and used the customer's funds for some purpose other than the benefit of the customer.

Pier Luccarelli (Registered Principal, Fairfax, Virginia)

was named as a respondent in an NASD complaint alleging that he falsely told a public customer that the value of securities accounts as set forth on the customer's monthly account statements was incorrect, and misled the customer as to the true current value of the accounts.

Michael Andrew Maher (Registered Representative, Portland, Oregon)

was named as a respondent in an NASD complaint alleging that he withdrew at least \$12,097.97 from a scholarship fund operated by employees of his member firm, without the knowledge or approval of the scholarship fund's Board of Directors, and used the funds for his own personal use and benefit.

Roy Wayne Matheny (Registered Representative, Calhoun, Louisiana)

was named as a respondent in an NASD complaint alleging that he effected check withdrawals totaling approximately \$143,435 from the account of a public customer and converted these funds to his own use and benefit by forging the customer's endorsement on the checks and depositing them into an account without the customer's knowledge or consent. The complaint also alleges

that Matheny received a check in the amount of \$50,000 from the public customer for the purpose of investing in a mutual fund, failed and neglected to purchase shares in the mutual fund, and instead converted the funds to his own use and benefit by affixing a firm stamp on the check and depositing it into an account without the customer's knowledge or consent. The complaint also alleges that Matheny failed to respond to NASD requests for information.

Joseph Edward Mattera (Registered Representative, Medford, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material facts in connection with his solicitations to induce public customers to purchase securities. The complaint also alleges that Mattera predicted the future prices of securities to public customers when he knew that he did not have a reasonable basis for his predictions, and that his predictions were materially misleading to the persons he was soliciting. The complaint also alleges that Mattera effected the purchase of securities in the accounts of customers without having obtained the prior authorization of the customers, then attempted to collect payment for one of the unauthorized transactions by stating or implying that the customer's credit rating would be damaged if payment was not made.

McLaughlin, Piven, Vogel Securities, Inc. (New York, New York) and **James Cecil McLaughlin (Registered Principal, New York, New York)** were named as respondents in an NASD complaint alleging that the firm, acting through McLaughlin, effected principal sales and purchases in municipal bonds for public customers at prices which were not fair, taking into consideration all relevant factors including, but not limited to, the expense or risk incurred on the

transactions, availability of the securities, the value of any services provided by the firm, and the total size of the transactions.

Bruce Dean Moutaw, Jr. (Registered Representative, San Diego, California) was named as a respondent in an NASD complaint alleging that he executed an unauthorized transaction in the account of a public customer by means of manipulative, deceptive, or other fraudulent devices or contrivances, without oral or discretionary authority from the customer.

Jeremy Lee Slovik (Registered Representative, Bayshore, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations, failed to disclose material facts, and made fraudulent price predictions in connection with his recommendations to public customers to purchase securities. The complaint also alleges that Slovik effected a transaction in the account of a public customer without the prior authorization of the customer.

Frederick Douglass Smith (Registered Representative, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he received \$14,286.27 from public customers for the purpose of investing in securities, failed to invest these funds or otherwise use them for any legitimate investment purpose, and instead, converted the funds to his personal use and benefit by depositing them into his firm's account, caused checks to be issued from the account payable to himself, and endorsed and cashed the checks. The complaint also alleges that Smith signed and submitted to his member firm a Form U-4 that contained a false and misleading statement.

Firms Suspended/Canceled

The following firms were suspended/canceled from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions/cancellations commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

Advanta OTC Securities, Philadelphia, Pennsylvania (November 3, 1998)

Ash Financial Corporation, Great Neck, New York (October 26, 1998)

Great American Financial Network, Inc., Norcross, Georgia (November 23, 1998)

Hampton Securities, Inc., Los Angeles, California (October 20, 1998)

Suspensions Lifted

The NASD has lifted the suspension from membership on the dates shown for the following firms because they have complied with formal written requests to submit financial information.

Alexander Kale Securities, Inc. (f/k/a Hemisphere Capital Corp.), New York, New York (October 29, 1998)

Block Trading, Inc., Houston, Texas (October 29, 1998)

Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award

Del Mar Financial Services, Inc., Del Mar, California (October 26, 1998)

Investors Associates, Inc., Hackensack, New Jersey (November 16, 1998)

Jaron Equities Corp., Hicksville, New York (November 16, 1998)

Smith, Benton & Hughes, Inc., Los Angeles, California (October 22, 1998)

Toluca Pacific Securities Corp., Burbank, California (November 4, 1998)

Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With Violations

Christ, Michael H., Lynbrook, New York (October 27, 1998)

DeLong, Jr., Jack E., Dunwoody, Georgia (October 22, 1998)

Duran, Lee Thomas, Fort Lauderdale, Florida (October 22, 1998)

Gelfand, Howard S., New York, New York (October 27, 1998)

Goldberg, Cindy M., Denver, Colorado (October 22, 1998)

Mader, Joseph O., Lewiston, Idaho (October 22, 1998)

Oliver, James G., Grapeville, Texas (October 27, 1998)

Shackleton, Susan A., Woodland Hills, California (October 22, 1998)

Yancey, Michael L., Lake Park, Georgia (October 22, 1998)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards

Buxton, Stephen Glenn, Fort Lee, New Jersey (November 5, 1998)

Dills, Kevin C., Rancho Santa Fe, California (October 26, 1998)

Fiorini, Paul Thomas, Los Angeles, California (November 4, 1998)

Garofalo, Jr., James William, Bay-side, New York (November 6, 1998)

Hession, Steven H., Holbrook, New York (October 22, 1998)

Lawrence, Jr., Edwin Leslie, Dix Hills, New York (October 29, 1998)

Mancusi, Michael Thomas, Brooklyn, New York (November 4, 1998)

Nunziato, William, Whitestone, New York (November 16, 1998)

Reynoso, David (a/k/a Reynolds, David), Westbury, New York (November 16, 1998)

Rosen, Lee S., Boca Raton, Florida (October 27, 1998)

Vitagliano, Richard T., Levittown, New York (October 22, 1998)

NASD Regulation Fines Lexington Capital, President For Securities Violations; Both Ordered To Pay Restitution To Investors

NASD Regulation announced that it has censured and fined Lexington Capital Corporation, New York, NY, \$100,000 and its CEO and President, Alan Michael Berkun, \$150,000. The firm and Berkun were also ordered to pay more than \$200,000 in restitution and interest to nearly 200 investors.

Berkun was also censured and barred as a general securities principal. Another former employee and broker, Joseph Marc Blumenthal, was censured, barred, and fined \$100,000.

Lexington (formerly known as Marlowe & Company, and now known as

Preston Langley Asset Management) and Berkun, both neither admitting nor denying NASD Regulation's findings, were sanctioned for collaborating to defraud investors and impeding regulatory scrutiny. Specifically, Lexington and Berkun were charged with violating the federal securities laws by, among other things, selling thousands of shares of a penny stock, U.S. Bridge Corp., to nearly 200 investors without making the required disclosures and determining if the investors were suitable to purchase these securities. The complaint, filed by the NASD Regulation's New York District office, also alleged that Lexington and Berkun also charged investors more than \$100,000 in fraudulently excessive markups in connection with an unregistered public distribution of 100,000 shares of Crown Laboratories, Inc. common stock. The excessive markups ranged from 47 percent to over 70 percent.

In addition, NASD Regulation found that the firm and Berkun, allowed an individual, who had been barred by NASD Regulation in 1992, to be associated with Lexington, without receiving proper regulatory approvals. Individuals who have been barred and want to re-enter the securities industry are required to obtain approval from NASD Regulation and the SEC.

NASD Regulation also charged that Lexington, acting through Berkun and others, falsified the firm's books and records to conceal the fact that Blumenthal solicited and effected over 300 transactions with investors while not properly registered with NASD Regulation and several states.

NASD Regulation Sanctions Olde Trader For Anti-Competitive Harassment Of A Nasdaq Market Maker; Firm Also Fined

NASD Regulation announced that Todd Wodek, a trader with Olde Discount Corporation, has been fined

\$15,000 and censured for anti-competitive harassment of a competing Market Maker who had narrowed the spread in a security traded on The Nasdaq Stock Market®. Wodek must also take and pass the NASD Equity Trader (Series 55) examination by December 9.

NASD Regulation also fined Olde Discount \$20,000 and censured the firm for failing to establish, maintain, and enforce adequate written supervisory procedures to prevent anti-competitive activities.

The decision by an NASD Regulation hearing panel found that Wodek retaliated against another Market Maker because that firm narrowed the spread (the difference between a stock's buy and sell price) in Oak Technology, Inc. by quoting the stock in a finer increment than was being quoted by Olde and other Market Makers in the stock. Generally, the narrower the spread, the less profits can be made by Market Makers on the purchases and sales of an individual security.

The hearing panel found that Wodek harassed the other Market Maker by calling him 20 times between 2:25 p.m. and 3:58 p.m. on October 7, 1996, and selling only 100 shares of Oak Technology each time – even though that Market Maker was displaying (on the Nasdaq market) that it would buy at least 1,000 shares in a single trade. The Market Maker executed each of Wodek's 20 orders for 100 shares. Normally, a firm selling 2,000 shares would offer to complete the trade in a single transaction to save time, reduce transaction costs, and minimize recordkeeping. By calling the Market Maker 20 times

to execute a 2,000 share order in 100-share increments, Wodek forced the Market Maker to spend significantly more time executing, reporting, and confirming the trades than would have been the case if Wodek had traded with the Market Maker at its 1,000-share displayed offering.

As a result, the Market Maker was forced to divert its attention away from other trading opportunities and responsibilities. The hearing panel concluded that Wodek called the Market Maker 20 times in order "to harass [the Market Maker] for narrowing the spread in Oak Technology." NASD rules specifically prohibit a Market Maker from retaliating against or harassing another Market Maker for engaging in legitimate competitive activity.

The decision also noted that it was "particularly disturbing" that Olde had failed to instruct its trading supervisor as to his responsibilities for deterring and detecting anti-competitive behavior.

Initial actions, such as this, by NASD Regulation disciplinary committees are final after 45 days, unless they are appealed to NASD Regulation's NAC, or called for review by the NAC. The sanctions are not effective during this period. If the decision in this case is appealed or called for review, the findings may be increased, decreased, modified, or reversed.

NASD Regulation Fines And Sanctions Paragon Capital And President \$135,000

NASD Regulation announced that it has censured and fined Paragon Capital Corporation of New York,

NY, \$95,000. Additionally, Paragon Capital and its President, Danny Jay Levine, were censured and fined \$40,000.

Paragon Capital, while neither admitting nor denying NASD Regulation's findings, was sanctioned for violating NASD and SEC rules concerning trade reporting, ACT, recordkeeping, registration of associated persons, and supervision.

Both Paragon Capital and Levine were fined, jointly and severally, for failing to establish, maintain, and enforce written supervisory procedures designed to comply with NASD and SEC rules regarding trade reporting, customer limit orders, SOES, best execution, registration of persons, and recordkeeping.

The violations were discovered by NASD Regulation's Market Regulation Department during a Trading and Market Making Examination of Paragon Capital in February 1996. The Trading and Market Making Examination Program started in 1996 and is designed to ensure that NASD members understand and comply with NASD and SEC rules governing trading and market making functions. In these examinations, Market Regulation staff conducts reviews for compliance with a number of rules including trade reporting, recordkeeping, best execution, the display and protection of customer limit orders, the use of electronic communications networks, customer confirmation disclosures, and supervision.

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